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NUNEZ, ET AL. V. CITY OF NEW YORK, ET AL.

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December 4, 2019

VIA ECF

The Honorable Laura T. Swain
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10006

Re: Nunez, et al. v. City of New York, et al., 11-cv-5845 (LTS) (JCF)

Dear Judge Swain,

We write to respectfully recommend the approval of the attached proposed order which provides additional guidance on the reporting requirements enumerated in the *Nunez* Consent Judgment (dkt. 249) § V. Use of Force Reporting and Tracking, ¶ 10. This is the ninth request to modify certain provisions of the Consent Judgment.¹ We have discussed the proposed order with the Parties and they consent to the proposed order.

Please do not hesitate to reach out if you have any questions or require any further information.

Sincerely,

s/ Steve J. Martin

Steve J. Martin, Monitor
Anna E. Friedberg, Deputy Monitor

¹ See Appendix A, which provides a summary of the Court ordered modifications to the Consent Judgment.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
MARK NUNEZ, et al.,	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	
	:	
CITY OF NEW YORK, et al.,	:	
	:	
Defendants.	:	
	:	11 Civ. 5845 (LTS)(JCF)
-----	X	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Plaintiff-Intervenor,	:	
	:	
- against -	:	
	:	
CITY OF NEW YORK and NEW YORK CITY	:	
DEPARTMENT OF CORRECTION,	:	
	:	
Defendants.	:	
-----	X	

[Proposed] ORDER CONCERNING NON-DOC STAFF REPORTING

WHEREAS, Plaintiff Class, Plaintiff the United States of America, and Defendants the City of New York and the New York City Department of Correction (“DOC”) entered into the Nunez Consent Judgment which was endorsed by the Court on October 22, 2015 (see Dkt. Entry 249);

WHEREAS, the Nunez Consent Judgment states that “(t)he City shall require that Non-DOC Staff Members who witness a Use of Force Incident that results in an apparent injury report the incident in writing directly to the area Tour Commander or to a supervisor who is responsible for investigating the incident. The City shall clearly communicate in writing this

reporting requirement to all Non-DOC Staff, and shall advise all Non-DOC Staff that the failure to report Use of Force Incidents that result in apparent injuries, or the failure to provide complete and accurate information regarding such Use of Force Incidents, may result in discipline.” (Section V, Paragraph 10);

WHEREAS, the Nunez Consent Judgment was revised to remove the language requiring Non-DOC Staff to report witnessing force that “results in an apparent injury” which was ordered by the Court on May 14, 2018 (see Dkt. Entry 314);

WHEREAS, the Nunez Consent Judgment defines “Non-DOC Staff” or “Non-DOC Staff Member” to be “any person not employed by DOC who is employed by the City or contracted by the City to provide medical and/or mental health care, social services, counseling, or educational services to Inmates” (Section III, Paragraph 22); and

WHEREAS, the Board of Education for the City School District of the City of New York (the “Board”) is the statutory employer of educational professionals providing education in the City School District and is a provider of educational services to certain Inmates within the custody of the DOC;

NOW, it is HEREBY ORDERED that:

(a) Any Board employee who witnesses a Use of Force Incident must report the incident in writing directly to the area Tour Commander or to a supervisor who is responsible for investigating the incident. This shall include, but not be limited to, filling out the narrative section of any witness report.

Dated: New York, New York
December ____, 2019

SO ORDERED:

HONORABLE LAURA T. SWAIN
UNITED STATES DISTRICT JUDGE

Appendix A
Chart of Modifications to
Nunez Consent Judgment (Dkt. No. 249)

Docket Entry	Date	Description of Modification Order			
261	11/23/15	Effective Date set as November 1, 2015.			
266	01/05/16	Modification of certain deadlines.			
		Consent Judgment Provision	Description of Provision	Original Deadline	Revised Deadline
		Section V ¶ 21	Use of Force Reporting and Tracking -- Department to develop definitions for categories of institutional violence data	60 Days from Effective Date	Additional 30 Days
		Section XIII ¶ 1	Training --Department to develop new staff training programs (Use of Force policy, Crisis Intervention, Probe Team)	60 Days from Effective Date	Additional 60 days
		Section XIII ¶ 2	Training --Department to improve staff training (Defensive Tactics, Cell Extraction Team, and Investigator)	60 Days from Effective Date	Additional 60 days
		Section XIII ¶ 4	Training --Department to develop new Direct Supervision staff training	60 Days from Effective Date	Additional 60 days
		Section XVI ¶ 3	Inmate Discipline --Department to develop and implement an incentive system for inmates under 18	60 Days from Effective Date	Additional 30 Days
297	4/4/17	Section XVI ¶ 4	Inmate Discipline --Department to develop and implement a disciplinary system for inmates under 18	60 Days from Effective Date	Additional 30 Days
		Modification of certain deadlines.			
		Consent Judgment Provision	Description of Provision	Original Deadline	Revised Deadline
		Section XIII (Training), ¶ 1(c)	Probe Team Training – Deployment of Probe Team Training to all Staff Members assigned to work regularly at any Intake Post.	Within 12 months of the Effective Date	December 31, 2017
297	4/4/17	Section XIII (Training), ¶ 2(b)	Cell Extraction Team Training – Deployment of the Cell Extraction Team Training to all Staff Members regularly assigned to Special Units with cell housing.	Within 12 months of the Effective Date	December 31, 2017
		Section XIII (Training), ¶ 4(b)	Direct Supervision Training – Deployment of the Direct Supervision Training to all Staff Members assigned to work regularly in Young Inmate Housing Areas.	Within 9 months of the Effective Date	April 30, 2018

Docket Entry	Date	Description of Modification Order			
		Section V (Use of Force Reporting & Tracking), ¶ 18 Section X (Risk Management), ¶ 16	Case Management System – to be developed and implemented.	December 1, 2016	<i>Develop:</i> August 31, 2017 <i>Implement:</i> December 31, 2017
303	8/11/17	Modification to the calculation of timing of Compliance and Monitor's Report - §XIX. (Reporting Requirements and Parties' Right of Access), ¶¶ 1, 17 AND			
		Consent Judgment Provision	Description of Provision	Current Deadline	Revised Deadline
		Section IX (Video Surveillance), ¶ 2(a)	Body Worn Camera Pilot – Pilot of 100 body-worn cameras.	Within one (1) year of the Effective Date	October 10, 2017
312	04/24/18	Consent Judgment Provision	Description of Provision	Original Deadline	Revised Deadline
		Section XIII (Training), ¶ 1(b)(ii)	Crisis Intervention and Conflict Resolution Training	Within 26 months of the Effective Date.	May 31, 2019
314	5/14/18	Modifications to Section V (Use of Force Reporting & Tracking), ¶ 10 regarding the requirements for Non-DOC Staff Member reporting of Use of Force incidents.			
316	8/10/18	Modifications to: (1) § V. Use of Force Reporting and Tracking, ¶ 23; (2) § IX. Video Surveillance, ¶ 3 (c); and (3) § XV. Safety and Supervision of Inmates Under the Age of 19, ¶ 3.			